

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

MICHELLE K. FRUITT,

Plaintiff,

V.

Case No. CIV-07-1167-R

MICHAEL J. ASTRUE,
Commissioner of the Social
Security Administration,

Defendant.

ORDER

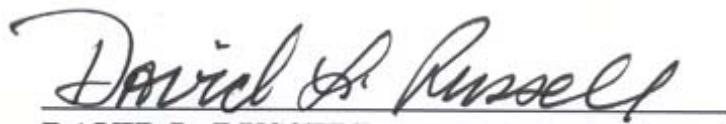
Before the Court are the Report and Recommendation of United States Magistrate Judge Doyle W. Argo entered November 26, 2008 [Doc. No. 28] and Plaintiff's Objection to the Magistrate Judge's Report and Recommendation [Doc. No. 29]. The Magistrate Judge recommended that Plaintiff's application for attorney fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d)(1)(A), in the amount of \$5,348.50, be granted. However, the Magistrate Judge recommended that Plaintiff's application to the extent Plaintiff sought costs in the form of recovery of her \$350.00 filing fee be denied because Plaintiff failed to comply with Local Civil Rule 54.1. Plaintiff objects to the Report and Recommendation to the extent the Magistrate Judge recommended denial of Plaintiff's application for costs.

The Court has carefully considered Plaintiff's arguments and the authorities cited by her in her Objection. However, the Court fully concurs in the thoughtful and excellent analysis of the Magistrate Judge in which he read and construed F.R.Civ.P. 54, 28 U.S.C. § 2412(a)(1), 28 U.S.C. § 1920 and LCvR 54.1 in *pari materia*. The Court likewise agrees

with the Magistrate Judge that recovery of costs pursuant to 28 U.S.C. § 2412(a)(1) as enumerated in 28 U.S.C. § 1920 must be sought by the procedure set forth in LCvR 54.1. Plaintiff's argument ignores the facts that 28 U.S.C. § 2412(a)(1) allows for the recovery of costs, specifically termed "costs," but provides no procedure for seeking same, and that 28 U.S.C. § 2412(d) deals only with awards of attorney fees and the types of expenses defined in § 2412(d)(2) and the procedure for recovering those fees and expenses, *see* 28 U.S.C. § 2412(d)(1)(B), as opposed to "any costs awarded pursuant to subsection (a)." 28 U.S.C. § 2412(d)(1)(A).

In accordance with the foregoing, the Report and Recommendation of the Magistrate Judge [Doc. No. 28] is ADOPTED in its entirety, Plaintiff's application for attorney fees under the EAJA in the amount of \$5,348.50 is GRANTED and Plaintiff's application for costs is DENIED. The Judgment entered herein on July 17, 2008 [Doc. No. 21] shall be amended accordingly.

IT IS SO ORDERED this 16th day of December, 2008.


DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE